IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 146 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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GUJARAT TEA PROCESSORS & PACKERS PVT. LTD.

Versus

COMMISSIONER OF INCOME TAX

Appearance:
MR JP SHAH for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 05/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

The Income Tax Appellate Tribunal, Ahmedabad Bench 'C' has, at the instance of the applicant-assessee, raised and referred the following 3 questions for the opinion of this Court under sec. 256(1) of the Income-tax Act, 1961 (for short 'the Act').

"1. Whether the Tribunal was right in law and on facts in coming to the conclusion that the assessee which was engaged in blending, grading and repacking of tea for making it into a marketable commodity was not entitled to the deduction u/s 80J of the I.T. Act, 1961?

2. Whether the assessee is entitled to relief u/s 80J in view of the decision of the Gujarat High Court in the case of Saurashtra Cement & Chemical Industries Ltd. (123 ITR 669)?

3. Whether the Tribunal was right in law and on facts in coming to the conclusion that the assessee which was engaged in blending, grading and repacking of tea for making it into a marketable commodity was not entitled to the claim on account of investment allowance?"

2. The Assessment Year is 1982-83 and the accounting year is the year ended on 31st March 1982. The assessee, a private limited company, is engaged in blending, grading and repacking of tea for the purposes of making it into a marketable commodity. The assessee claimed deduction u/s 80J of the Act and sec. 32A of the Act. The Income-tax Officer rejected both the claims following his decision in relation to similar claim for Assessment Year 1981-82. The Commissioner (Appeals), however, allowed both the claims on the ground that such claims had been accepted by him in his appellate order for Assessment Year 1981-82. The revenue carried the matter in appeal before the Tribunal.

3. On behalf of the assessee, the decision of this Court in the case of Saurashtra Cement and Chemical Industries Ltd. v. CIT, (1980) 123 ITR 669 (Gujarat), was relied upon in support of the claim for relief u/s 80J of the Act. The Tribunal distinguished the said decision by holding that in the case before the High Court in the case of Saurashtra Cement and Chemical

Industries (supra), the relief u/s 80J had been allowed by the ITO in the initial year and hence it was held that it was not permissible to the ITO to reject the claim in any of the subsequent years without withdrawing or rejecting the claim in the initial year, but in the case of the assessee the position was different inasmuch as the claim was allowed for Assessment Year 1981-82 only by Commissioner (Appeals); that the Commissioner (Appeals) was a judicial authority and his powers could not be synonymous with those of the ITO. The Tribunal also examined various documents and evidence, which were placed before it, for holding that the assessee was not entitled to relief u/s 80J of the Act as the activities carried on by the assessee amounted to "processing" but did not amount to "manufacturing".

4. The reasoning adopted by the Tribunal in relation to Question Nos. 1 and 2 relating to allowability of relief u/s 80J of the Act cannot be sustained. In CIT v. Kanpur Coal Syndicate, (1964) 53 ITR 225, the Apex Court, while discussing the scope of powers of the Appellate Assistant Commissioner (now known as Commissioner (Appeals), has stated thus :

> "The Appellate Assistant Commissioner has, therefore, plenary powers in disposing of an appeal. The scope of his power is coterminous with that of the Income-tax Officer. He can do what the Income-tax Officer can do and also direct him to do what he has failed to do."

This decision came to be reiterated and relied upon in subsequent decision by the Apex Court in the case of Jute Corporation of India Ltd. v. CIT, (1991) 187 ITR 688. Therefore, the distinction sought to be drawn between the case of the assessee and decision of this court in the case of Saurashtra Cement & Chemical Industries Ltd. (supra) is a distinction without difference. Applying the ratio of the said decision, it is apparent that this is the second year, namely, the year under reference is not the initial year, and without disturbing the relief granted in the initial year, it is not permissible to examine the question regarding relief u/s 80J and decide to reject or withdraw the relief in this year, which is subsequent to the initial year, that is, Assessment Year 1981-82. It is pertinent to note that the decision of the Commissioner (Appeals) for Assessment Year 1981-82 was accepted by the revenue.

5. The contention raised on behalf of the revenue that the decision for Assessment Year 1981-82 had not

been challenged by way of appeal before the Tribunal should not come in the way of the revenue in challenging the decision for the subsequent year, requires to be stated only to be rejected. It is necessary to note that the issue is not being decided on the ground of earlier year's decision having not been challenged, but on application of ratio of the decision of this Court in the case of Saurashtra Cement & Chemical Industries Ltd. (supra). In the view we are taking, it is not necessary for us to enter into the merits or demerits of the discussion and findings of the Tribunal rendered in relation to the claim of relief u/s 80J of the Act, namely, whether the activities amount to manufacture or are merely processing activities.

6. Insofar as Question No. 3 is concerned, which pertains to claim for investment allowance, the factual position is that there was no discussion made by the ITO while rejecting the claim for Assessment Year 1981-82. The assessee succeeded in appeal before the Commissioner (Appeals) and the revenue did not challenge the said decision any further. In the year under reference, both the ITO and the Commissioner (Appeals) have followed their respective orders for Assessment Year 1981-82. The Tribunal has recorded the finding to the effect that the assessee is not entitled to the investment allowance, firstly, because "in view of the decision that we have taken in respect of ground No. 1 in revenue's appeal"; and, secondly, because "the CIT (Appeals) had not applied his mind on merits of the claim in either of the years."

7. Insofar as the first reason for denying the claim, namely, reasons as applicable in respect of granting relief u/s 80J of the Act is concerned, the said finding cannot now stand in light of the view we have taken. In relation to the second reason, it is apparent that the Commissioner (Appeals) took a view that he had allowed the claim for Assessment Year 1981-82 and hence he followed suit for the year under reference. The finding of the Tribunal that the Commissioner (Appeals) had not applied his mind on merits of the case in either of the years is not correct. During the course of hearing, we had enquired of both the sides as to what was the findings recorded by the appellate authority for Assessment Year 1981-82 and whether the said order had been given effect to by the assessing authority. By consent of both the sides, the order of the appellate authority for Assessment Year 1981-82 and the orders of the assessing authority giving effect to for Assessment Year 1981-82 and 1983-84 have been taken on record.

8. For the Assessment Year 1981-82 the Commissioner (Appeals) held that "the ITO is directed to look into the matter and allow investment allowance as per rules". The said order has been given effect to on 9th February 1987 by the assessing officer in the following terms :

> "The investment allowance of Rs. 13,086/- should be allowed in the year in which reserve is created."

The order for Assessment Year 1983-84 specifically grants deduction of the investment allowance for Assessment Year 1981-82 at the same figure as quantified in the order for Assessment Year 1981-82.

9. In light of this factual situation, it is not necessary for us to render any opinion in relation to Question No. 3 as the authorities have already granted investment allowance for Assessment Year 1981-82 and the reasons adopted by the Tribunal for denying the said relief for the year under reference do not survive.

10. Question No. 2 is answered in the affirmative, that is, in favour of the assessee and against the revenue. As a consequence, Question No. 1 is answered in the negative, that is, in favour of the assessee and against the revenue. Question No. 3 is returned unanswered for the reasons stated hereinbefore. The Tribunal shall adjust its decision in appeal accordingly while passing order u/s 260(1) of the Act.

The reference stands disposed of accordingly, there being no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

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